



M.O.E. Policy Manual

POLICY TITLE POLLUTION ABATEMENT PROGRAM: DEVELOPMENT, COMPLIANCE AND ENFORCEMENT		NO. 05-02-01
<u>Legislative Authority</u> the Environmental Protection Act. the Ontario Water Resources Act the Pesticides Act		
<u>Statement of Principles</u> This policy describes the Ministry's pollution abatement program. The policy relates to all sources of pollution requiring the design, approval, delivery and installation of facilities or operational improvement(s). Additional requirements relating to particular sources of pollution, such as Policy 05-03, will be found in other policy statements. <u>Definitions</u> <u>Program Approval</u> A 'Program Approval' refers to a document describing and approving a schedule of abatement activity submitted by a polluter to the Ministry and approved. Legislative Authority: The Environmental Protection Act, Sections 9, 10, 11, 18.		
<u>Point of Contact</u>		Operations Coordinator, Operations Division
<u>Effective Date</u> February 9, 1981		

Director Issued Order

A 'Director Issued Order' refers to an order or requirement issued by the Ministry which is not specifically covered by other definitions. A Director is any staff person appointed by the Minister for the purposes of the Act.

Legislative Authority: the Environmental
Protection Act
Sections 7, 18, 19,
42, 57, 68, 69.

the Ontario Water
Resources Act
Sections 17, 23, 24,
43, 51, 61.

the Pesticides Act
Sections 11, 21, 24.

Control Order

A 'Control Order' refers to a requirement by the Ministry for specified abatement actions to be accomplished under a given schedule. Such Orders are generally issued as a result of a contravention of Section 13 of the Environmental Protection Act or a contravention of a standard or regulation. Control Orders include Requirements and Directions issued under the Ontario Water Resources Act.

Legislative Authority: the Environmental
Protection Act
Sections 6, 14, 113,
114, 115, 116.

the Ontario Water
Resources Act
Section 20, 23, 24,
32, 51, 52, 61.

the Pesticides Act
Sections 13, 21, 22,
23, 24.

August 22, 1986

Provincial Officer's
Requirement Stop Order

A 'Provincial Officer's Requirement' refers to the authority of a Provincial Officer to survey, collect information and report on contaminant sources. A Provincial Officer is any person designated by the Minister for the purpose of the Act. Such requirements also include the requirement of an employee or agent of the Minister having a similar authority under the Ontario Water Resources Act.

Legislative Authority: the Environmental
Protection Act
Sections 127, 128,
129, 130.

the Ontario Water
Resources Act
Section 10.

the Pesticides Act
Section 17.

Stop Order

A 'Stop Order' is a requirement by the Ministry for an immediate stop to the addition, discharge or emission of a contaminant either permanently or for a specified period. Stop Orders include Emergency Orders issued under the Ontario Water Resources Act.

Legislative Authority: the Environmental
Protection Act
Sections 7, 12, 112,
117, 118, 119.

the Ontario Water
Resources Act
Section 62.

the Pesticides Act
Section 20.

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Notice of Intent

A 'Notice of Intent' is a notice which is served to provide written notification of a Director's intention to issue a Control Order, the reasons for the order and a copy of the report explaining the reasons. This notice must be served at least 15 days prior to the issuance of a Control Order.

Legislative Authority: the Environmental Protection Act
Section 116.

the Ontario Water Resources Act
Section 61.

the Pesticides Act
Section 13.

1. Abatement Program Development Process

1.1 Problem Definition

The Ministry will begin the development of a pollution abatement program by defining the environmental problem(s).

1.2 Report Preparation

Where there is a severe, long-standing problem having a large degree of environmental impact, the Ministry will ask the company or person responsible for the problem to prepare a report outlining the technical options available for correcting the defined problem. In preparing this report, the company should address factors such as technical options, capital investments required, operating costs, economic feasibility, socio-economic implications and environmental benefits.

1.3 Commencement of Abatement Discussions

Once the report prepared under 1.2 is complete, specific abatement discussions with the polluter will commence. Available financial assistance programs will be thoroughly reviewed and discussed during abatement discussions.

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1.4 Request for a
Program Approval

Where the polluter agrees to prepare the report and wishes to enter into a Program Approval the Ministry will allow its use only when the following conditions are met:

- (a) The polluter has demonstrated good faith through responsible timely pollution abatement in the past, or
- (b) The Ministry staff are confident of the polluter's intent and ability to implement a Program Approval.

1.5 Program Approval
Components

The following items will be contained in a Program Approval:

- (a) A clear commitment by the polluter subject only to a 'force majeure' clause acceptable to the Director;
- (b) Signatures of Senior Officers of the polluting firm under corporate seal;
- (c) Assurance that the polluter has the financial capability and has earmarked these funds;
- (d) Staged dates for each item;
- (e) A description of the pollution problem and how the polluter will resolve this by the program;
- (f) A statement that the polluter has investigated the options to its satisfaction and agrees that the proposed remedial project is technically feasible;
- (g) A commitment to supply the Ministry with copies of documents (i.e., purchase orders, designs, contracts with consultants or contractors) as evidence of compliance with the various stages of the abatement program;

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- (h) A statement that the Program Approval is limited in its application to those parts of the plant or those processes or those contaminants specifically referred to in the Program Approval;
- (i) A statement that time is of the essence to achieve the desired results;
- (j) A statement that failure to meet any part constitutes failure to comply with the whole Program Approval;
- (k) An agreement that the Program Approval be made public and, if requested by the Ministry, a willingness to participate in the public process respecting the proposed Program Approval.

1.6 Alternative
Program Measures

If an abatement program cannot be assured after a reasonable period of discussion with the polluter not exceeding six months then alternative measures will be used to ensure abatement:

1.6.1 Orders and
Requirements

Director Issued Orders, Control Orders, or Provincial Officer's Requirements may be employed by the Ministry to bring about pollution abatement.

1.6.2 Stop Orders

Where there is an immediate danger to human life and health or to property, a Director may issue a Stop Order directed to the person responsible for the source of the contaminant. In choosing this course of action, a Director will seek legal advice and obtain the consent of the Assistant Deputy Minister.

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1.6.3
Prosecution

Directors may recommend prosecution as follows:

- (a) In any case where it would be appropriate and just to do so, taking into account all the circumstances; or
- (b) In place of, to supplement or to enforce Orders where, in their opinion, abatement would be successfully achieved more quickly.

1.6.4
Voluntary
Abatement

The normal inspection and complaint investigation activities, followed by voluntary abatement actions, will continue and are not restricted by any of the foregoing points.

1.7 Report and Review
Made Public

Where the company or owner has prepared the report referred to in 1.2, the Ministry will prepare a written review of it, and both reports will be made public, subject to the confidentiality of proprietary information. Both reports will be distributed to local MPP's and Municipal Officials.

1.8 Refusal to Prepare
Report

Where the company or person refuses to prepare the report referred to in 1.2, the Ministry will prepare the report, and both the report and any response by the company will be made public. Both reports will be distributed to local MPP's and Municipal Officials.

1.9 Public
Consultation

After making the company or owner's report and the Ministry's review public as in 1.7, or after making the Ministry-prepared report public as in 1.8, the Director will hold a public information session for significant pollution problems, or for pollution problems that generate high public interest. Local MPP's and Municipal Officials will be notified prior to the public information session.

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1.9.1
Exceptions

Public information sessions will not be held for the following:

- (a) Orders under Part VII of the Environmental Protection Act;
- (b) Provincial Officer's Requirements;
- (c) Stop or Emergency Orders;
- (d) Prosecutions; and
- (e) Orders for minor pollution problems.

1.10 Receipt of
Public's Comments

After making the report public as in 1.9, or after holding a public information session, the Director will receive written comments from the public for a period of thirty days.

1.11 Director's
Recommendation

After receiving public comment, the Director will take a course of action. Local MPP's and Municipal Officials will be notified regarding the Director's choice of action.

1.11.1
No Significant
Alternative
Proposals

If no significant alternative proposals are received in writing by the Director within thirty days of making his decision public, then the Director will sign the Program Approval or issue a Notice of Intent.

1.11.2
Significant
Alternative
Proposal

If a significant alternative proposal is received, then the Director will conduct a second public information session.

1.12 Director's
Decision

If in the opinion of the Director a significant change in the abatement program becomes necessary as a result of step 1.11.2, then he shall proceed to renegotiate the program with the polluter.

1.13 Revised Program

Once a revised abatement program is produced, steps 1.5 through 1.12 shall be repeated if so required by the Director.

1.14 Publication and Distribution

Information regarding the following items will be available as specified:

1.14.1
Available at
Regional, District
and Head Offices

The Notice of Intent, any Program Approval, The Director's recommendation under 1.11, and the Director's decision under 1.12 will be available at Ministry Regional, District, and Head Offices.

1.14.2
Available at
Regional Office

Written comment from the public, significant alternative proposals received under 1.11.2, and any revised abatement program will be available at the Regional Office.

1.14.3
Notice of Intent
or Program
Approval

The Notice of Intent or the Program Approval will be distributed to local MPP's and Municipal Officials.

2. Abatement Program
Administration

All activities related to Program Approvals, Director-issued Orders, Control Orders, and Stop Orders will be carried out on a project management basis whereby a specified staff person is assigned the responsibility for management of abatement activities.

2.1 Delays Due to
Financial
Constraints

Any significant proposed delays in the implementation of an abatement program due to financial constraints will result in steps 1.5 to 1.12 being taken.

3. Abatement Program
Compliance

3.1 Monitoring

To ensure compliance with Program Approvals and Orders the following activities will be undertaken:

- (a) The polluter will monitor emissions or discharges and the ambient quality of air and water where specifically required by the Ministry.
- (b) The above data will be reported to the Ministry and will be available for review by the public at the local Ministry office;
- (c) The polluter will submit regular status reports(s) on its compliance with the Order or Program Approval;
- (d) These reports (with the exception of proprietary information identified by the polluter and agreed to by the Ministry) will be available for review by the public at the local Ministry office;
- (e) The Ministry will audit Items (a) and (c) above, and carry out any additional tests that may be required;
- (f) The information provided by the polluter may be used for enforcement purposes.

3.2 Enforcement Action

3.2.1
General

Where a polluter is not presently under a Control Order or Program Approval, and there is a potential hazard to the environment, or where there is a discharge of a contaminant to the natural environment, the Ministry may prosecute, seek an injunction, or issue a Program Approval, Control Order, or Stop Order as conditions warrant.

3.2.2
Where a Polluter
is Under a Program
Approval or Order

- (a) Where a polluter is under a Program Approval or Order and has not essentially complied with the intent of any item in the Order or Program Approval, then the Ministry will prosecute.
- (b) Where a polluter is under a Program Approval or Order and is complying fully with its terms, the Ministry will not prosecute in respect of those items covered by the Order or Program Approval.
- (c) Where a polluter is under an Order or Program Approval and is in violation of items not covered by a Program Approval or Order, and where conditions warrant, the Ministry may prosecute.

3.2.3
Prosecution by
Other Parties

Where the Ministry has decided not to prosecute a polluter, the Ministry will make information regarding the pollution available to other parties upon request, subject to constraints imposed by legislation.

3.3 Amendments or
Extensions

3.3.1
Increased Time or
Loading

If the polluter wishes to significantly extend the time allowed in the Order or Program Approval or increase the loading above that specified, such amendments will be subject to the process described previously by items 1.5 to 1.12.

3.3.2
Shorter Time and
Loading

If the polluter proposes a change with the same or shorter time frame, or the same or lesser loading, the Order or Program Approval will be amended by the Ministry and distributed to local MPP's and Municipal Officials.

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3.3.3
Short Term
Extensions

When an extension is requested because of matters beyond the control of the polluter, the Ministry may extend an Order or Program Approval on a short term basis and it will be distributed to local MPP's and Municipal Officials.

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